

APPEAL NO. 031790  
FILED AUGUST 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 16, 2003. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) sustained a compensable right elbow injury on \_\_\_\_\_; that the claimant did not have disability resulting from the compensable right elbow injury; that the appellant/cross-respondent (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified his employer of an injury under Section 409.001; and that the carrier has not waived the right to contest compensability of the claimed injury under Sections 409.021 and 409.022. The carrier appeals the hearing officer's determinations that the claimant sustained a compensable right elbow injury on \_\_\_\_\_, and that he timely notified his employer of an injury. The claimant appeals the hearing officer's determinations that he did not sustain any additional damage or harm to his low back when he fell on \_\_\_\_\_, and that he has not had disability. Each party filed a response. There is no appeal of the hearing officer's determination in favor of the carrier on the waiver issue.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10), that he gave timely notice of injury to the employer pursuant to Section 409.001, and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations that the claimant sustained a compensable right elbow injury on \_\_\_\_\_; that he timely notified his employer of an injury under Section 409.001; and that he has not had disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant contends that the hearing officer erred in finding that the evidence failed to establish that he sustained any additional damage or harm to his low back when he fell on \_\_\_\_\_, because no issue regarding the extent of the compensable injury was before the hearing officer, and because the evidence supports a lower back aggravation injury. We agree that there was no disputed issue from the benefit review conference regarding the extent of the compensable injury. The claimant contended at the CCH that he injured his low back and right elbow when he fell from the pipe rack. In Texas Workers' Compensation Commission Appeal No. 010322, decided

March 22, 2001, we indicated that there may be instances where it becomes necessary to make findings on the extent of the compensable injury in order to resolve other disputed issues. In the instant case, the claimant claimed he had disability from July 13, 2002, through the date of the CCH. The treating doctor's records reflect that he kept the claimant off work due to a lumbar condition. In this circumstance, it was necessary for the hearing officer to determine whether the compensable injury included a low back injury in order to resolve the disability issue because Section 401.011(16) defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Consequently, we do not find that the hearing officer erred in determining the nature of the compensable injury in order to resolve the disability issue. The hearing officer's findings regarding the claimant's low back condition and that the fall at work did not cause additional harm or damage to the claimant's low back, are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Edward Vilano  
Appeals Judge